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OF THE COURT

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FILED

OCT 30 2018

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES OF AMERICA, et al., ex
rel. [UNDER SEAL],**

Plaintiffs,

v.

[UNDER SEAL],

Defendants.

Case No. CV-17-7250-KAW

**STATES' NOTICE OF ELECTION TO
DECLINE INTERVENTION**

**[FILED UNDER SEAL PURSUANT TO
THE FALSE CLAIMS ACT, 31 U.S.C. §§
3730 (b)(2) and (3)]**

**[FILED/LODGED CONCURRENTLY
UNDER SEAL: [PROPOSED] ORDER]**

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10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11

12
13 **THE UNITED STATES OF AMERICA,**
14 **THE STATES OF CALIFORNIA,**
15 **COLORADO, CONNECTICUT,**
16 **DELAWARE, THE DISTRICT OF**
17 **COLUMBIA, FLORIDA, GEORGIA,**
18 **HAWAII, ILLINOIS, INDIANA, IOWA,**
19 **LOUISIANA, MARYLAND,**
20 **COMMONWEALTH OF**
21 **MASSACHUSETTS, MICHIGAN,**
22 **MINNESOTA, MONTANA, NEVADA,**
23 **NEW HAMPSHIRE, NEW JERSEY, NEW**
24 **MEXICO, NEW YORK, NORTH**
25 **CAROLINA, OKLAHOMA, RHODE**
26 **ISLAND, TENNESSEE, TEXAS,**
27 **VERMONT, COMMONWEALTH OF**
28 **VIRGINIA, and WASHINGTON, ex rel.**
ZACHARY SILBERSHER,

Plaintiffs,

v.

JANSSEN BIOTECH, INC., ET AL.,

Defendants.

Case No. 17-cv-07250 KAW

**STATES' NOTICE OF ELECTION TO
DECLINE INTERVENTION**

**[FILED IN CAMERA AND UNDER
SEAL IN ACCORDANCE WITH THE
FALSE CLAIMS ACT, 31 U.S.C. §
3730(b)(2) and the CALIFORNIA FALSE
CLAIMS ACT, CALIFORNIA
GOVERNMENT CODE § 12650 ET SEQ.]
AND THE FALSE CLAIMS ACTS OF
THE OTHER PLAINTIFF STATES**

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1 Pursuant to their respective false claims acts, the States of California, Colorado,
 2 Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maryland,
 3 Michigan, Minnesota, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina,
 4 Oklahoma, Rhode Island, Tennessee, Texas, Vermont, Washington, the District of Columbia, and
 5 the Commonwealths of Massachusetts and Virginia (collectively, "Plaintiff States"), the Plaintiff
 6 States hereby notify this court of their decision not to intervene in the above-captioned action
 7 ("this action"). Counsel for the State of California is filing this Notice on behalf of the other
 8 Plaintiff States at their request.

9 The Maryland False Health Claims Act provides that "if the State does not elect to
 10 intervene and proceed with the action . . . before unsealing the complaint, the court shall dismiss
 11 the action." Md. Code Ann., Health Gen. § 2-604(a)(7). Accordingly, the State of Maryland
 12 requests that all claims asserted on behalf of the State of Maryland be dismissed without
 13 prejudice.

14 Although the Plaintiff States decline to intervene, they respectfully advise the Court that the
 15 California False Claims Act and the other Plaintiff States' respective false claims acts, like the
 16 federal model, allow the relator to maintain the action in the name of the Plaintiff States;
 17 provided, however, that the Plaintiff States have the right to a hearing if they, or any of them,
 18 object to a proposed settlement or dismissal of this action. Therefore, the Plaintiff States request
 19 that, should either the relators or the defendants propose that this action be dismissed, settled or
 20 otherwise discontinued, the Plaintiff States shall be notified and shall have the right to comment
 21 and be heard before the Court rules or grants its approval.

22 The Plaintiff States reserve their right to be provided with any and all pleadings and
 23 deposition transcripts, to intervene in this action for good cause at a later date, and seek the
 24 dismissal of relators' action or claim.

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1 A proposed order governing these matters is filed concurrently with this notice.

2 Dated: October 25, 2018

Respectfully submitted,

3 XAVIER BECERRA
4 Attorney General of California

5
6 

7 DAVID ZLOTNICK
8 Deputy Attorney General
9 *Attorneys for Plaintiff State of California and*
10 *on behalf of the States of Colorado,*
11 *Connecticut, Delaware, Florida, Georgia,*
12 *Hawaii, Illinois, Indiana, Iowa, Louisiana,*
13 *Maryland, Michigan, Minnesota, Montana,*
14 *Nevada, New Jersey, New Mexico, New York,*
15 *North Carolina, Oklahoma, Rhode Island,*
16 *Tennessee, Texas, Vermont, Washington, the*
17 *District of Columbia, and the Commonwealth*
18 *of Massachusetts and Commonwealth of*
19 *Virginia*

PROPOSED ORDER

The Plaintiff States having declined to intervene in this action pursuant to their respective False Claims Acts and the United States having previously declined to intervene, the Court rules as follows:

IT IS ORDERED THAT:

1. The Complaint, Summons, Case Management Order, the United States' Notice of Election to Decline Intervention and accompanying Order, as well as the States' Notice and this Order shall be unsealed forthwith.

2. The Relator shall serve the above documents upon the defendant.

3. The Seal shall be lifted as to all other matters occurring in this action hereafter.

4. Counsel for the State of California may file a notice of appearance for the purpose of receiving ECF notifications of documents filed with the Court.

5. The States (other than Maryland) are entitled to intervene in this action upon a showing of good cause and to be heard in connection with any proposed settlement or dismissal of this action.

6. In accordance with the terms of the Maryland False Health Claims Act, Md. Code Ann., Health Gen, § 2-604 (a)(7), the State of Maryland having declined to intervene in this matter, all claims asserted on behalf of Maryland are hereby dismissed without prejudice.

IT IS SO ORDERED:

This 30th day of October, 2018



KANDIS A. WESTMORE
United States Magistrate Judge

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **U.S., ex al., ex rel. Zachary Silbersher v. Janssen Biotech, Inc., et al**

No.: **CV-17-7250-KAW**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1455 Frazee Road, Suite 315, San Diego, CA 92108.

On October 25, 2018, I served the attached **STATES' NOTICE OF ELECTION TO DECLINE INTERVENTION; [PROPOSED] ORDER** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Diego, California, addressed as follows:

Jennifer S. Wang
United States Attorney's Office
450 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102-3495

Nicomedes Sy Herrera
Joseph Saveri Law Firm, Inc.
601 California Street, Suite 1000
San Francisco, CA 94108

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 25, 2018, at San Diego, California.

Rachel Chang

Declarant



Signature

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA ex rel.
ZACHARY SILBERSHER, et al,

No. C17-7250 KAW

Plaintiff(s),

v.

CERTIFICATE OF SERVICE

JANSSEN BIOTECH, INC., JANSSEN
ONCOLOGY, INC., JANSSEN RESEARCH
& DEVELOPMENT, LLC and JOHNSON &
JOHNSON,

Defendant(s).

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 31, 2018, I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy into an inter-office delivery receptacle located in the Office of the Clerk.

Jennifer Wang
US Attorney's Office
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San Francisco, CA 94102

David Zlotnick
Deputy Attorney General
1455 Frazee Rd., Suite 315
San Diego, CA 92108

Joseph R. Saveri
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601 California Street, Suite 1000
San Francisco, CA 94108

SUSAN Y. SOONG, CLERK

BY: 

Susan Imbriani, Courtroom Deputy